82-1436

No. A-559

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

CITY OF TORRANCE,
Appellant,

VS.

WORKERS' COMPENSATION APPEALS BOARD
OF THE STATE OF CALIFORNIA AND
STATE COMPENSATION INSURANCE FUND,
Appellees.

On Appeal From the Supreme Court of the State of California

MOTION OF CALIFORNIA WORKERS' COMPENSATION INSTITUTE FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE AND PROPOSED BRIEF

DALE E. FREDERICKS
(COUNSEL OF RECORD)
C. GORDON TAYLOR
SEDGWICK, DETERT, MORAN & ARNOLD
111 Pine Street
San Francisco, CA 94111
(415) 982-0303
Attorneys for California Workers' Compensation Institute

DOWNE OF SAN FRANCISCO, INC. • 180 NINTH ST. • S.F., CA 94103 • (415) 864-8850

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Codes

Table of Authorities Cited

Codes

Other Authorities

Rule

No. A-559

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

CITY OF TORRANCE,
Appellant,

VS.

WORKERS' COMPENSATION APPEALS BOARD
OF THE STATE OF CALIFORNIA AND
STATE COMPENSATION INSURANCE FUND,
Appellees.

On Appeal From the Supreme Court of the State of California

MOTION OF CALIFORNIA WORKERS' COMPENSATION INSTITUTE FOR LEAVE TO FILE BRIEF AS AMICUS CURIAE

The California Workers' Compensation Institute[1], a non-profit research organization representing carriers that provide coverage accounting for more than 97% of all workers' compensation premium in the State of California, moves pursuant to Supreme Court Rule 36.3 for leave to file a brief as *amicus curiae* urging appellees' motions to dismiss or affirm be granted. The consent of attorneys for appellees has been obtained. The present motion is made necessary because we have been unable to obtain the consent of the appellant City to file the appended brief.

[1]Hereinafter "Institute". Citations herein are to the Jurisdictional Statement ("J.S.") and the Appendix filed therewith ("J.S.App.").

The case now before the Court raises no substantial federal questions; representing merely one of myriad examples of appropriate legislative adjustment of the employer-employee relationship status within the workers' compensation benefit system to be found on both the state and federal levels. As will be demonstrated in Institute's accompanying brief, appellant's principal contentions are totally unfounded. Neither the asserted legislative effect upon the subject policy of workers' compensation insurance, abrogation of State Funds obligation to pay insurance benefits for victims of cumulative trauma (J.S. 2), nor the stated purpose of the subject statute, "The abrogation of State Funds financial obligations to City and similar employers to pay cumulative trauma claims" (J.S. 19) are factually supportable or legally sound.

The subject legislation represents a well-recognized reserved power of the State to regulate the business affairs of its citizens, including its sub-divisions such as the appellant City, respecting the rights and obligations of employers to provide workers' compensation benefits to the industrially injured and their dependents, and to provide for an assurance program to safeguard prompt and adequate provision of these benefits. The challenged legislative action was part of a continuing process of employer benefit liability period contraction begun in 1973 and intended to bring the California Workers' Compensation Act in line with the prevailing national rule. Both appellant City and Institute participated in the extensive legislative hearings conducted prior to the enactment of this statute; as did a substantial number of other members of the entire California community of insured and self-insured

employers, labor unions, insurance industry representatives and officials of government agencies such as the Workers' Compensation Appeals Board, the office of the Insurance Commissioner and the California Rating Inspection Bureau.

Institute believes it would be helpful to explain why the challenged state legislation is an appropriate exercise of California's reserved right to regulate the employer-employee status of its citizens, including its subdivisions, for the purpose of providing a complete system of workers' compensation and adequate insurance coverage of such liability as mandated by its own state constitution and why the presently sought jurisdictional review is not required. For these reasons, we request that the Court grant the motion of Institute for leave to file a brief as *amicus curiae*.

Dated: April 11, 1983.

Respectfully submitted,

DALE E. FREDERICKS
(COUNSEL OF RECORD)
C. GORDON TAYLOR
SEDGWICK, DETERT, MORAN & ARNOLD
Attorneys for California Workers' Compensation Institute

No. A-559

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1982

CITY OF TORRANCE,
Appellant,

VS.

WORKERS' COMPENSATION APPEALS BOARD
OF THE STATE OF CALIFORNIA AND
STATE COMPENSATION INSURANCE FUND,
Appellees.

On Appeal From the Supreme Court of the State of California

BRIEF OF CALIFORNIA WORKERS' COMPENSATION INSTITUTE AS AMICUS CURIAE

California Workers' Compensation Institute as *amicus curiae* urges that this Court, pursuant to Rule 16.1(b), grant appellees' motions to dismiss on the ground that the appeal fails to present a substantial federal question or grant their alternative motions to affirm the judgment of the Supreme Court of the State of California on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as to not need further argument.

INTEREST OF THE AMICUS CURIAE

California Workers' Compensation Institute[1] is a non-profit research organization representing carriers that provide coverage accounting for more than 97% of all workers' compensation premium in the State of California, and concerns itself with matters of importance in the law and administration of workers' compensation in the State, including the assurance of such benefit payment liability through State regulated insurance and self-insurance programs.

The Institute's purposes include the examination of public issues that affect the California Workers' Compensation Act and to assist in the development and presentation of sound economic principles and responsible public policy in that area of the law. The Institute participated in the presentation of such policy statements in testimony before the California Legislature Assembly Committee on Finance, Insurance and Commerce during the pendency of the currently challenged statute, and to which proceeding record appellant refers as authority for many of its factual assertions (J.S. 6, 11, 12 and 14). The Institute also participated in the litigation of this case through the filing of a brief *amicus curiae* on behalf of the position of appellees in both the District Court of Appeal and the Supreme Court of the State of California proceedings below.

As explained in the accompanying Motion the Institute believes that the subject legislation, narrowing the period of compensable injurious employment in cumulative occupational injuries and eliminating a prior "single employer exception" classification, did not impair the full coverage

---

[1]Hereinafter "Institute". Citations here are to the jurisdictional statement (J.S.) and the Appendix filed therein, ("J.S. App.").

obligations of the standard California compensation insurance policy involved. Nor did this social legislation, regulating the State's system of Workers' Compensation through adjustment of the employment status obligation under its reserved power, have as either a stated purpose or actual result, ". . . That the State, as a party to the contracts, had improperly repudiated its financial obligation to City for no purpose other than to increase its own coffers" (J.S. 25).

There is widespread concern that appellant's perhaps superficially appealing argument, previously rejected by both State and Federal Courts in like circumstances, not be mistakenly entertained by this Court. Acceptance of this false and misleading constitutional contention would allow private contracting parties to establish their own measure of financial responsibility, created by their employment status, to the exclusion of the State's well recognized and longstanding public interest in the welfare of its citizens through an appropriate and adequate workers' compensation system. The Institute, as an organization representing a substantial segment of the California insurance industry, has a particular interest in submitting its view of this issue to the Court.

STATEMENT

Three central factual elements of this case merit isolation and presentation in this ancillary brief, lest their previous court opinion discussion and comprehensive appellee presentations be somewhat obscured by thorough consideration of other pertinent matters.[2]

---

[2]It is noteworthy that appellant's principal asserted facts are garnered not from the evidentiary record of this case but from the legislative record which establishes the obviously valid political nature of this constitutionally challenged state enactment.

1. The clearly stated legislative purpose of the 1977 enacted changes of California Labor Code § 5500.5 was not solely "administrative convenience" as appellant asserts (J.S. 19).[3] Included as well was the purpose of taking into account for insurance premium purposes those compensable cumulative occupational injuries that were accruing but not reported.[4] This previous underwriting deficiency was experienced by all involved in the compensation benefit assur-

---

[3]The multiple legislative goals of this statutory adjustment of the Compensation Act are generally set forth in the opinion of the Court of Appeal (J.S. App. 30-31). In a previously decided case of the California Supreme Court, *Flesher v. Work. Comp. Appeals Bd.*, 23 Cal.3d 322, 152 Cal.Rptr. 459 (1979), the 1973 and 1977 statutory amendment objectives were described as follows:

> "The purpose of these amendments was to provide greater certainty to insurers in anticipating costs and necessary reserves, to simplify the proceedings by reducing the number of employers and insurers required to be joined as defendants, and to reduce the burden placed on the entire system by the former procedure." (23 Cal.3d 322, 328, 152 Cal.Rptr. 459, 463.)

[4]Workers' Compensation Rating Bureau Chairman, Leo Sousa, chief of the licensed rating organization charged with the responsibility of compiling statistical data for Workers' Compensation Insurance premium ratemaking under California Insurance Code § 11750-11758, testified at these legislative proceedings:

> "I would like to make some statements for the committee's information that prior to January 1, 1977 there was no specific provision in the rates to cover cumulative injury cases. The current ratemaking procedure only takes into account those cumulative injury cases that are reported with regular experiences. This is to be borne in mind that all policy holders (I am including those that were insured then that are legally uninsured now or self-insured) of prior years did not pay the premium for the cases that were incurred then that are being reported now. The premium of current policy holders is being used to pay for these old cases. Moreover, from the premiums that are being collected now through bulk reserving or the IBNR, we are attempting to anticipate the costs of future cumulative injury claims."

ance system and include all workers' compensation insurance carriers and self-insured employers, not just the State Compensation Insurance Fund.

2. The subject policy of California workers' compensation liability insurance was issued in conformity with stringent State requirements governed in important particulars by statute and as to substance and form by the State's Insurance Commissioner.[5] The covenants of this insurance contract, to which appellant refers in support of its impairment allegations, are contained in all California compensa-

---

(California Assembly Committee on finance insurance and commerce interim hearings January 12 and 19, 1977, page 247.)

Mr. Souza further stated:

"Our recommendation, simply stated—we need a system where we can more accurately forecast claim costs including cumulative injury cases for one or two years in advance in contrast to the present system where we anticipate costs for each year of the next twenty or more years. Correspondingly, the carriers then can more realistically estimate their reserve needs if we are on this claims-made basis that we are recommending for adoption. And incidentally, this also applies to self-insurers or governmental agencies that are legally uninsured. They could probably do a better job of estimating their Workers' Compensation costs under the proposed system than under the present system."

(*Id.*, at page 248.)

Appellant became self-insured July 1, 1971 and therefore its contentions both of being deprived of coverage for incurred but not reported cumulative injury claims during State Fund coverage for which it "had paid more than $1.5 million in premiums" (J.S. 2) and that the Fund established reserves for such unreported losses from premiums paid by the City are not simply unjustified speculation without evidentiary support, they are false.

[5]California Ins. Code §§ 11650-11662 and *see generally* 2 Hanna, *California Law of Employee Injuries and Workers' Compensation* "Insurance Policy and Coverage Generally", § 21.01, pp. 21-2.1 to 21-4.

tion policies by statutory decree.[6] The issuing insurance carrier, appellee State Compensation Insurance Fund, is a public enterprise fund, self-supporting and self-operating, fairly competitive with other insurers, and a legal entity distinct from the State as such.[7]

Based upon the aforementioned requisite uniformity of essential convenants of California workers' compensation policies and upon the fact that appellee State Compensation Insurance Fund enjoys no greater status than any other California insurer it is evident that the 1977 statutory amendment applies to all insurers and self-insurers and is not special legislation of the State intended to repudiate its financial obligations to City for no purpose other than to increase its own coffers, as falsely claimed. (J.S. 25)[8]

3. The 1977 amendment of Labor Code § 5500.5 redefined the period of compensable injurious exposure in cumulative occupational injury cases, completing the established legislative program of shortening this period, begun in 1973, by prescribing a gradual reduction to a one year term of employment liability, and eliminating the "single employer exception" classification privilege. This redefinition of employers statutory obligation to provide compensation benefits was based upon status, not contract,[9] and

---

[6]California Ins. Code §§ 11650-11662.

[7]California Ins. Code §§ 11773 and 11775; and *see generally* 1 Hanna Op. Cit. supra, § 2.04[1].

[8]The importance of security arrangements and the value of state funds as one of three basic methods of insuring employer workers' compensation is appropriately noted in the report of the *National Committee on State Workers' Compensation Law*, July 1972, pp. 112 and 113.

[9]*Noe v. Traveler's Insurance Co.* 172 Cal.App.2d 731, 342 P.2d 978 (1959).

the policy covenants of the State Fund contract, obligating it pay in accordance with liability assessed against employment during its policy coverage, remained unimpaired.

ARGUMENT

I

THE CHALLENGED STATE LEGISLATION IMPAIRS NO VESTED CONTRACTUAL OBLIGATION

The history of litigation arising from Labor Code § 5500.5 enactment and amendment since its inception in 1951 is instructive both in establishing the long-standing legislative activity in this area and in demonstrating that appellant's claim of "vested right" impairment (J.S. 14, 15 and 16) is absurd. In the case of *State of Cal. v. Ind. Acc. Comm. and Koski*, 175 Cal.App.2d 674, 246 P.2d 861 (1959), noted by the District Court below (J.S. at 34-35), a similar "vested right" argument was made by a California compensation carrier claiming a right of contribution from a state supported second injury fund, the Subsequent Injuries Fund.[10] The compensation claim in this case was

---

[10]The court in that case cited with approval the following passage of 45 Cal.Jur.2d, "statutes" § 88, pp. 604-606 (now 58 Cal.Jr.3d, "statutes" § 72, pp. 418-420):

> "The repeal of a law does not validate a contract or other transaction which, before the repeal, was invalid. Conversely, the repeal of the statute does not ordinarily divest a right that is vested and complete at the time of the repeal. But where the right is not vested but inchoate, and the right or remedy given by the statute is not of common law origin, the right falls and the statutory remedies ceases, even after commencement of an action or repeal, without a saving clause, of the statute, unless the right was converted into final judgment before the repeal, or unless there is subsequent law that enables the court to try and determine the right.

neither asserted nor finally adjudicated until after the 1977 amendment of Labor Code § 5500.5 which removed the "single employer exception" upon which appellant relies to assert a right of contribution. The City had therefore no "vested right" against its former insurance carrier with respect to its duty as an employer to pay a death benefit to the dependent of its employee.

II

THE APPEAL PRESENTS ISSUES THAT ARE TOTALLY POLITICAL IN NATURE AND PROPERLY RESERVED TO THE STATE LEGISLATURE

A. The rights and liabilities pertaining to benefits under the California Workers' Compensation Act are not founded upon contract but are statutory rights arising from the employer-employee relationship and are imposed by the law as incidents of that status. *Argonaut Mining Co. Ltd. v. Ind. Acc. Comm. and Gonzalez*, 104 Cal.App. 27 (1951). It is a valid exercise of state police power and may not be encumbered by private contract. *Alaska Packers Assn. v. Ind. Acc. Comm.*, 294 U.S. 532, 79 L.Ed. 1044 (1934).

B. The regulation of contracts of insurance is also a valid exercise at the same reserved power of the State. *German Alliance Ins. Co. v. Lewis*, 233 U.S. 389 (1913). Both the measure and distribution of employer liability

---

The repeal of a statute conferring civil rights or powers operates to deprive the citizens of all such rights and powers that are at the time inchoate, incomplete and unexercised. Thus, the repeal of a statute takes away the remedies afforded by it and defeats actions or proceedings pending under it at the time of the repeal, particularly where the cause of action was created and the remedy given by the statute and was not known to the common law."

for compensation benefits and maintenance of a sound assurance program to secure these payments are well recognized legislative objectives of the State under its police power.[11]

C. The subject legislation is entitled to every possible presumption of validity until proven to the contrary beyond a reasonable doubt. *Powell v. Pennsylvania* 127 U.S. 678 (1887). This statute involving a widely diffused public interest may not be encumbered by an isolated claim of private contract impediment. *East New York Savings Bank v. Hahn* 326 U.S. 330, 90 L.Ed. 34 (1945).

D. The legitimate State purposes of this challenged legislation have been identified, and are sanctioned by past opinions of this Court previously cited. Not only has appellant failed to prove the absence of either necessity or reasonableness of the statute, it has also failed to establish that a State contract is involved.[12] This State economic

---

[11]This Court noted the nature and public concern of insurance contracts in the *German Alliance Ins. Co.* case, *supra*, as follows:

> "The contracts of insurance may be said to be interdependent. They cannot be regarded singly, or isolatedly, and the effect of their relation is to create a fund of assurance and credit, the companies becoming the depositories of the monies of the insured, possessing great power thereby, and charged with great responsibility. How necessary their solvency is, is manifest. On the other hand, to the insured, insurance is an asset, a basis of credit. It is practically a necessity to business activity and enterprise. It is therefore essentially different from ordinary commercial transactions, and, as we have seen, according to the sense of the world from the earliest times,—certainly the sense of the modern world,—is it of the greatest public concern."
>
> (233 U.S. 389, 414-415.)

[12]*See U.S. Trust Co. v. New Jersey* 431 U.S. 1, 52 L.Ed.2d 92 (1977).

and social legislation is, therefore, entitled to this Court's deference as to its stated need and reasonableness. *East New York Savings Bank, supra.*

III

NEITHER STATE NOR FEDERAL DECISIONAL LAW SUPPORT APPELLANT'S ARGUMENT

A. It is noteworthy that appellant offers in support of its position no decisional law, either State or Federal, involving a contract of Workers' Compensation Insurance nor even treating the general subject of the Workers' Compensation system. It is respectfully submitted that none exist.

B. The challenged statute is in keeping with both the prevailing national rule of the states and with Federal legislation on the subject.[13] The following two State and Federal Court decisions are offered in support of appellees' motions both because they are representative of multi-jurisdiction judicial rejection of appellants' argument and because they specifically treat the asserted issue of "vested rights" under a compensation insurance policy and alleged contract impairment.

In *Douglas County v. Ind. Comm.*, 275 Wisc. 309, 81 N.W.2d 807 (1957), the Wisconsin court held that the

---

[13]A rather complete compilation of state decisional law limiting employer liability to a relatively brief period of last injurious exposure is found in 4 Larson, *Law of Workers' Compensation*, § 95.21, pp. 17-79 to 17-88 and will not be here further enumerated.

The federal approach to this socio-economic problem is well established in the Longshoremens' and Harborworkers' Compensation Act case of *Traveler's Ins. Co. v. Cardillo*, 225 F.2d 137 (2d Cir. 1955).

county employers statutory right to offset retirement benefits against its obligation to provide Workers' Compensation death benefits did not become vested even though legislative recission occurred after the employee's demise, but before an award was made. It further held that the financial responsibility of the employer's carrier, under a full coverage policy similar to that of the State Fund, was to be measured by the employer's liability under the law at the time its obligation was legally determined, not at the time its contract was consummated. A legislative revocation was found to neither interfere with vested rights nor impair the obligation of a contract.

In the Federal employee benefits system under the Longshoremen's and Harborworker's Compensation Act the case of *Todd Shipyards Corp. v. Witthuhn,* 596 F.2d 899 (9th Cir. 1979), offered because of both its facts and a learned concurring opinion of Justice Sneed, further supports appellees' position. In upholding legislation providing a death benefit enacted after the industrial injury but before the worker's demise, the court specifically rejected the argument of the employer and its carrier that the statute retroactively impaired their vested rights under the insurance policy. Justice Sneed accurately observed in his concurring opinion that regardless of the absence of existence of Federal constitutional restraint upon Congress to abrogate the contractual obligation of others, the relationship of employer and employee partakes the characteristics of status rather than contract. It was unanimously agreed that the expectations of the parties that the government would not alter the employer's compensation obligation did not give rise to vested rights which could not be modified retroactively. Such is the case at bar.

CONCLUSION

For the reasons stated herein, this appeal should be either denied, dismissed, or, in the alternative the judgment entered in the cause by the Supreme Court of the State of California affirmed.

Dated: April 11, 1983.

Respectfully submitted,

DALE E. FREDERICKS
(COUNSEL OF RECORD)
C. GORDON TAYLOR
SEDGWICK, DETERT, MORAN & ARNOLD
Attorneys for California Workers' Compensation Institute